



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 25, 2019

BY EMAIL

The Honorable Katharine H. Parker
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, N.Y. 10007

Re: *United States of America v. Stuart Finkelstein*, 19 Mag. 10645

Dear Judge Parker:


The Government writes to correct the background summary of certain provisions of the Americans with Disabilities Act ("ADA") set forth in paragraph 11(b) of the Complaint in this matter. This summary was based on information the undersigned provided to former U.S. Attorney's Office Special Agent Posilkin, the affiant on the Complaint. (Mr. Posilkin is leaving our Office to join the Federal Deposit Insurance Corporation.) The corrections, based on *Kreisler v. Second Ave. Diner Corp.*, 731 F.3d 184, 187–88 (2d Cir. 2013), are immaterial to the charges set forth in the Complaint but should nonetheless be noted. Specifically, corrected paragraph 11(b) should read as follows (changes indicated by underlining and strikeouts):

b. To assert standing under the ADA, the plaintiff must: (1) allege past injury, which may be satisfied by alleging that plaintiff was deterred from entering the subject location; (2) demonstrate that it is reasonable to infer that the discriminatory treatment will continue, and (3) demonstrate that it is reasonable to infer that the plaintiff intends to return to the establishment again. ~~To allege past injury, the plaintiff must make some effort to visit the public establishment that is being sued.~~

Should the Court desire any further information, the Government would be pleased to comply.

Respectfully submitted,

GEOFFREY S. BERMAN
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by: 

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cc: Brian Griffin, Esq. (by email)